

**RECEIVED  
CENTRAL FAX CENTER**

**MAR 20 2006**

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Application No.: 10/707,230  
Filing Date: November 28, 2003  
Inventor (first named): Katz, et al.  
Group Art Unit: 1754  
Examiner Name: Pratt, Helen F.  
Attorney Docket No.: 45496.20

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**AFFIDAVIT UNDER 37 CFR Sec. 1.131**

Province of Alberta  
CANADA

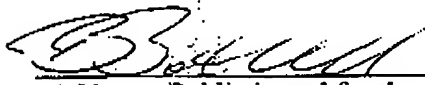
We, SAUL KATZ and VALERIE TESKEY (a.k.a. VALERIE PRICE), being duly sworn, depose  
and say as follows:

1. We are the inventors for the above-identified patent application.
2. All of the inventive activity declared in this Affidavit took place in Canada.
3. We conceived of the invention claimed in the above-identified patent application prior to June, 2002, the publication date of the Painter et al. publication, and prior to March 14, 2000, the filing date of US Patent Application No. 10/817,502 (the "Wolf Reference"), which is also the filing date of US Patent Application No. 09/524,445 (the "Gilles Reference").
4. By no later than 17 February 2000, we had conceived of and reduced to practice the invention comprising a nutritional bar formulation, claimed in the claims of the present application.

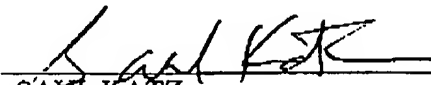
5. Attached as Exhibit "A" hereto is a copy of a letter addressed to Saul Katz from Dr. Wolever of the Glycaemic Index Testing Inc. (GIT), dated 17 February 2000, confirming that we had spoken to Dr. Wolever about testing the glycemic index of the nutritional bar formulations we had developed, which are the subject of the present application.
6. Attached as Exhibit "B" hereto is a copy of a letter addressed to Val Price from Dr. Thomas Wolever of the Glycaemic Index Testing Inc. (GIT), dated 30 March, 2000, which follows up the conversation we had confirmed in Exhibit "A". We had by this time provided at least two of our formulations (which were in existence prior to 17 February 2000) to Dr. Wolever in confidence. The letter confirms that we had discussions with GIT by that date regarding testing of bars we had developed which we believed to be high carbohydrate, low glycemic index bars in accordance with our claimed invention. We worked with Dr. Wolever with different formulations and variations of such bars and continued development of the product from that time forward. One embodiment, which we had referred to as a Lemon Bar, finished testing in May, 2001. The final report for GI test for the Lemon Bar was delivered to us by letter dated 11 May, 2001. A copy of this letter is attached hereto as Exhibit "C". Those test results accompanying Exhibit "C" are referred to in our patent specification.
7. The general formulation of the Lemon Bar was conceived of and reduced to practice prior to 17 February 2000.

8. The formulations we had developed and are referred to in Exhibits "A", "B" and "C", correspond to the invention broadly disclosed and claimed in the above-identified patent application.

SWORN BEFORE ME at the City of )  
Edmonton, in the Province of Alberta, this )  
20 day of *March*, 2006. )

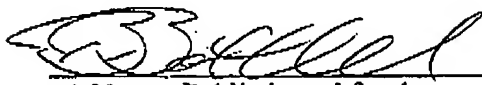


A Notary Public in and for the )  
Province of Alberta )



SAUL KATZ

SWORN BEFORE ME at the City of )  
Edmonton, in the Province of Alberta, this )  
20 day of *March*, 2006. )



A Notary Public in and for the )  
Province of Alberta )



VALERIE TESKEY  
(a.k.a. VALERIE PRICE)

Received: 11/24/2005 04:31PM \* Pg 2/4  
Nov 24 2005 5:25PM NEW#ERR#NUTRITION  
18/02 '00 00:00 FAX 416 769 7210

780 423 1786

P.2

GI TESTING INC

001



Glycaemic Index Testing Inc.  
135 Mavety St., Toronto,  
Ontario, Canada M6P 2L8  
Tel: (416) 978-5556  
FAX: (416) 769-7210

17 February, 2000

Saul Katz,  
President,  
New Era Nutrition

FAX: 780-423-1786

Dear Mr. Katz,

I enjoyed the conference with Jain and Val today. I found the project interesting and I am looking forward to the opportunity of working with you. As you requested, the estimated cost of determining the GI of foods using our standard protocol in 10 subjects is as follows (Canadian funds):

1 food: \$5,400  
2 foods: \$8,000  
3 foods: \$10,400  
4 foods: \$12,600  
5 foods: \$14,400

add \$1800 for every additional food up to a total of 12.

For more than 12 foods, the cost would be about \$2100 per food. This does not include the cost of additional control tests which may be suggested or required, nor the cost of shipping foods or food analysis. Any changes to the protocol may require ethics review which would be charged to the client. Advanced payment of at least \$5000 is required before any tests start, and the balance is due either upon completion or according to a mutually agreed upon schedule based on progress and the provision of preliminary results (final results require 3 bread tests which may not be completed until the end of the series). I am happy to include an option to terminate further provisionally planned tests if the results are not as expected.

Tests are normally done on a first-come-first-served basis, and it is difficult to predict how long it will take to complete a series far in advance. Over the next 3-4 months I expect to be working at close to our current maximum capacity. As I mentioned on the phone, a long-term contract would facilitate our ability to expand our testing capacity so as to facilitate timely completion of tests you require.

Yours sincerely,

*Tom Wolaver*  
Thomas MS Wolaver, MD, PhD,  
President

THIS IS EXHIBIT "A" \*referred to in the  
Affidavit / Declaration of

SAUL KATZ & VALERIE PRICE

Sworn / Declared before me this 20<sup>th</sup> day

of March A.D. 2006

*[Signature]*

A Commissioner for Oaths in and  
for the Province of Alberta  
A Notary Public

Received: 11/24/2005 04:31PM \* Pg 3/4  
 Nov 24 2005 5:25PM NEW#ERR#NUTRITION  
 03/31/00 00:50 FAX

780 423 1786

P.3

001



Glycaemic Index Testing Inc.  
 135 Mavety St., Toronto,  
 Ontario, Canada M6P 2L8  
 Tel: (416) 978-5556  
 FAX: (416) 769-7210

30 March, 2000

Val Price,  
 New Era Nutrition,  
 New Era Place,  
 10519 - 99 Avenue,  
 Edmonton, Alberta T5K 0E7

4pages

FAX: 780-423-1786

Dear Val,

Thanks for the information. You said you have 3 bars to test, but I only got data for Test Bars 1 and 3. I enclose our terms of research and standard protocol. For the initial "mini-test", I propose to follow our normal protocol for determining the GI, except we will only do a single test of the standard food instead of 3. Thus, I propose to compare the 3 bars to a single test of 50g carbohydrate from bread in 6 subjects. Taking the ratio of the average glycaemic response, areas should be within 15-20 of the true GI. If the results are not as expected, then you may reformulate and we can test again. When you have what you consider to be the final product, then I propose to do a proper test of each bar with 10 subjects and 3 repeats of the standard. We prefer to use bread as the standard, and adjust the results to the glucose standard - we periodically test 50g glucose and can confirm the conversion factor. If glucose has a GI of 100 then bread has a GI of 71. You want to get a GI of 40-50; is this based on glucose or bread as the standard?

The cost for each "mini-test" (as described above) is \$4,300 and for GI determination (standard protocol) is \$10,400. Thus, the minimum testing comes to a total of \$14,700. I normally ask for 33% advanced payment, but since the "mini-test" is less than that, I suggest \$3,000 as the advanced payment. Receipt of the advanced payment indicates your acceptance of the Terms of Research. With human subjects, I cannot guarantee a timeline, but I would expect to be able to complete the mini-test within 4 weeks of starting. If we get the bars and advanced payment within 2-3 weeks, then I think we will be able to start quickly.

I have a question about the composition. Is glycerine included in the total carbohydrate? Can you give me the total carbohydrate to 1 or 2 significant figures (like the fiber and glycerine) so I can calculate a bit more accurately? I do not want to include glycerine in the 50g available carbohydrate portion (though it probably does raise blood glucose). It looks like we will need 20 of each bar for the initial tests. I will confirm this when I have the full information. Can you send the info for Test Bar 2 (FAX to above number for confidential receipt)? What are solvents?

We are currently developing terms for agreements to allow our clients to use the results with or without reference to GI Testing. We may ask you your views on these.

Yours sincerely,

*Tom Wolever*

Thomas MS Wolever, MD, PhD,  
 President

THIS IS EXHIBIT \* B \* referred to in the  
 Affidavit / Declaration of

SAUL KATZY VALERIE PRICE

Sworn / Declared before me this 20 day  
 of March A.D. 2000

*[Signature]*  
 A Commissioner for Oaths in and  
 for the Province of Alberta  
 A Notary Public

Nov 24 2005 5:25PM

Received: 11/24/2005 04:31PM \* Pg 4/4  
NEW#ERA#NUTRITION

780 423 1786

P. 4



11 May, 2001

Jing Lu,  
New Era Nutrition,  
New Era Place,  
10519 - 99th Ave.,  
Edmonton, Alberta T5K 0E7

Dear Jing,

Here is the final report for the GI test of the Lemon Bar. Please let me know if you would like to have an electronic copy of the Lotus 123 spreadsheet containing in the data. If you have any questions or comments about the report, please don't hesitate to contact me.

Yours sincerely,

*Tom*  
Thomas MS Wolever, MD, PhD,  
President

THIS IS EXHIBIT C referred to in the  
Affidavit / Declaration of

SPUL KATZ & VALENTINE PRICE

Sworn / Declared before me this 20<sup>th</sup> day

of March A.D. 2006

*[Signature]*  
A Commissioner for Oaths in and  
for the Province of Alberta  
A Notary Public